

OAH
TRAINING MATERIALS FOR
NEW BOARD MEMBER ORIENTATION
DEPARTMENT OF CONSUMER AFFAIRS

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March 2005

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1. Introduction: Most administrative proceedings before the Office of Administrative Hearings are governed by the Administrative Procedure Act, Government Code sections 11370 through 11529, and California Code of Regulations, title 1. [Found at the website for the Office of Administrative Hearings: www.oah.dgs.ca.gov; click the link for “Laws and Programs.”] These Training Materials include summaries and excerpts from these code sections and regulations. (§ = section number)

2. Office of Administrative Hearings: The Office of Administrative Hearings (OAH) functions as the state’s internal “court system.” Over forty Administrative Law Judges (ALJ) staff four regional offices—Sacramento, Oakland, Los Angeles and San Diego. OAH conducts hearings for over 100 state agencies and over 500 local agencies and school districts. For the fiscal year July 2003 through June 2004, OAH opened 8,616 cases and held hearings in 4,511 cases.

3. Pleadings:

A. Accusation: A written statement of charges against the holder of a license or privilege, to revoke, suspend or limit the license, specifying the statutes and rules allegedly violated and the acts or omissions comprising the alleged violations. Government Code section 11503.

B. Statement of Issues: A written statement of the reasons for denial of an application for a license or privilege, specifying the statutes and rules allegedly violated and the acts or omissions comprising the alleged violations. Government Code section 11504.

C. Petition for reinstatement or reduction of penalty: A person whose license was revoked, suspended or placed on probation can petition for that license to be reinstated, to have the penalty reduced, or for the probation to be terminated. Many boards have specific statutes or regulations relating to these petitions. Hearings on these petitions usually take place before the board itself at a scheduled board meeting, with an ALJ presiding. The board usually goes into closed session after the hearing to deliberate and decide the outcome. The ALJ usually prepares the Decision, for signature of the board chairperson. Some Boards have the authority to permit the ALJ sitting alone to hear petitions and render a proposed decision to the Board. This may also happen when the board does not have a quorum at a board meeting. Government Code sections 11517, 11522.

4. Proposed Decision:

A. ALJ’s action: After the hearing, the ALJ will issue a Proposed Decision that includes the factual and legal basis for the decision. The factual basis for the decision must be based exclusively on the evidence in the hearing record, that is, the testimony and all exhibits received into evidence. The proposed decision will also include a recommended order that will (1) uphold the discipline or license denial the Board’s attorney and/or staff have advocated, (2) modify the

discipline or denial to include something less or more than Board staff and/or attorney advocated, or (3) dismiss the case in its entirety. Penalties in the decision's order may not be based on any guidelines or policy memos that have not been adopted as regulations. Government Code section 11425.50.

B. Board's action: OAH will forward the Proposed Decision (PD) and the exhibits from the hearing to the board. The board has several options upon receipt of the PD: adopt all of the PD; reduce the penalty and adopt the rest of the PD; make technical or minor corrections and adopt the PD; reject the PD, order a transcript, and remand the matter back to the ALJ to take further evidence and write a new PD; or reject the PD, order a transcript (or not, if the parties agree), and decide the case itself based on the record. Government Code section 11517.

5. Settlements: The licensee/applicant and agency may decide to settle at any time during the administrative process. Usually, settlements are entered into before an administrative hearing is held to avoid the expense of the hearing. The settlement is reduced to a written stipulation and order which sets forth the settlement terms and proposed disciplinary order. The written stipulation and order is forwarded to the Board for its consideration. During the settlement process the Deputy Attorney General has been advised by the agency's executive officer or head of enforcement regarding acceptable terms. The Deputy Attorney General may advocate before the Board for approval of the settlement. The Board may accept the settlement and issue its decision and order based on the settlement. If the Board rejects the settlement, the case will return to the disciplinary process. A new settlement may be submitted to the Board at a later time or the case may proceed to an administrative hearing before an ALJ. Government Code section 11415.60.

6. Disqualification: With some limited exceptions, a board member cannot decide a case if that board member investigated, prosecuted or advocated in the case or is subject to the authority of someone who investigated, prosecuted or advocated in the case. A board member may be disqualified for bias, prejudice or interest in the case. Government Code sections 11425.30, 11425.40.

7. Ex Parte Communications: "Ex parte" technically means "by or for one party only." In practice, it is a limitation on the types of information and contacts that board members may receive or make when considering a case. While a case is pending, there are only limited types of communications with board members that are allowed if all parties are not aware of the communication and do not have a chance to reply. For example, a board member can accept advice from a staff member who has not been an investigator, prosecutor or advocate in the case; but that person/staff cannot add to, subtract from, alter or modify the evidence in the record. Or, a board member can accept information on a settlement proposal or on a procedural matter. Most other communications may need to be disclosed to all parties, and an opportunity will be provided to the parties make a record concerning the communication. Disclosure may also apply to communications about a case received by a person who later becomes a board member deciding the case. Receipt of some ex parte communications may be grounds to disqualify a board member.

Government Code section 11430.10:

“(a) While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.

(c) For the purpose of this section, a proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.”

Government Code section 11430.20:

A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

(a) The communication is required for disposition of an ex parte matter specifically authorized by statute.

(b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.

Government Code section 11430.30:

“ A communication otherwise prohibited by Section 11430.10 from an employee or representative of an agency that is a party to the presiding officer is permissible in any of the following circumstances:

(a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.

(b) The communication is for the purpose of advising the presiding officer concerning a settlement proposal advocated by the advisor.

(c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is nonprosecutorial in character:

| *(1) The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.*

(2) The advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.”

Government Code section 11430.40:

“If, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section 11430.50.”

Government Code section 11430.50:

“(a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the presiding officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.”

Government Code section 11430.60:

“Receipt by the presiding officer of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

Government Code section 11430.80:

“(a) There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) This section does not apply where the agency head or other person or body to which the power to hear or decide in the proceeding is delegated serves as both presiding officer and agency head, or where the presiding officer does not issue a decision in the proceeding.”

8. Additional Hypotheticals/Issues

The responses to these hypothetical questions are not intended to be definitive. Rather, they are intended to sensitize Board members to the variety of situations they may face, and suggest the process Board members should follow in formulating a response when they find themselves in similar situations.

- A. A Board member discovers during the Board's consideration of a case that his/her spouse served as the Board's expert witness during the administrative hearing before the ALJ. The Board member was not appointed to the Board until after the administrative hearing took place and the proposed decision was issued. What should the Board member do? Do other members of the Board have any obligations?
- The Board member whose spouse served as the expert should disqualify (recuse) himself/herself from the case and should not be privy to any further Board deliberations regarding the case. Nor should the member discuss the case with any other member.
 - The reason for the Board member's recusal should probably be disclosed to the parties in the case, reduced to writing, and sealed as part of the record in the case in the event the decision is appealed (although technically there may not be a legal requirement to take these steps).
 - Other Board members may continue to serve as long as they are unbiased with respect to the case.
- B. An ALJ is sitting with the entire Board during a hearing on a licensee's petition to have his license reinstated. As the licensee is testifying, a Board member's cell phone rings, the Board member answers the call, gets up from the table, and goes to another room to talk to the caller. Later, when the Board is considering whether or not to grant the petition, the Board member takes part in deliberations and seeks to have his/her vote counted when voting on whether or not to grant the petition. Should the Board member participate and vote on the petition?
- No. The Board member should disqualify him/herself from further participating and voting in this case. The Board member must be present when evidence in the form of the licensee's testimony is presented.

- C. A Board is considering whether or not to adopt a proposed decision that recommends revocation of a license on the basis of evidence establishing that the licensee has been convicted five times in the recent past of driving under the influence of alcohol. The proposed decision finds that the licensee has admitted to being an alcoholic with a serious drinking problem, but has been receiving treatment for his alcoholism in a residential facility for one year. Two years earlier, a participating Board member announced at a news conference that he would ensure that licensees with substance abuse problems were not allowed to practice the licensed activity. Should this Board member participate in the consideration of this case?
- Probably Not. This is a gray area. On the one hand, if the Board member can decide this case in an unbiased manner based solely on the evidence in the case, he may not be required to disqualify himself. On the other hand, the Board member's previous statement may be evidence of an appearance of bias and it may provide a basis for challenging the Board's decision if the Board member does not recuse himself. It might be best if the Board member recuses himself.
- D. A Board member is told by a close friend that the friend has been called to be a witness for the respondent in a disciplinary proceeding against a Board licensee. The best friend tells the Board member that she had nothing but good things to say about the licensee. What should the Board member do?
- The Board member should disclose to the executive officer or an appropriate enforcement staff person the conversation with the friend as an *ex parte* communication. The name of the friend, the substance of the communication, any response by the Board member and the date and time of the communication must be written in a memorandum and made a part of the record. All parties in the case must be given notice and an opportunity to be heard regarding the communication.
 - The Board member should consider whether he/she can be unbiased in considering the case should it come before the Board for consideration. If not, the Board member would be subject to disqualification.
- E. The Board of Taxidermy is hearing a petition for reinstatement. A former licensee whose license was revoked is seeking reinstatement. After taking evidence about the original charges against, and the rehabilitation of, the petitioner, one of the Board members asks about an unrelated incident. The member had read in the papers that the petitioner had been arrested, but later released, after some local high school students told police that the petitioner had tried to sell them drugs and was saying "creepy things" to them about dead animals. No charges were brought. The Board member becomes persistent and angry in questioning the petitioner about the incident. Should the Board member be permitted to ask the question in the first instance and should the continued persistent and angry questioning continue?

- While asking the first question may be appropriate, the primary purpose of the hearing is to determine the petitioner's rehabilitation from the charges that resulted in his license revocation. The petitioner's arrest, without charges being brought or any conviction, is not part of the record in the case and it would not necessarily be a basis to deny the petition. This is also a situation in which Board members should look to the overriding rule of fairness. After a reasonable inquiry has been made, care needs to be taken so as not to appear biased or unable to review and vote upon the petition in a fair and neutral way. Petition hearings are also a forum where Board members must comport themselves as judges, and they must be fair and appear fair.
- The holdings in two recent cases are also illustrative on the subject of Board hearings: In *Lacy Street Hospitality Services v. City of Los Angeles* (2004) 125 Cal.App.4th 526, the court held that failure of city council members to pay attention during a quasi-judicial hearing on proposed modifications to zoning conditions for an adult cabaret, was a violation of due process and an abuse of discretion. In *Nasha L.L.C. v. City of Los Angeles* (2004) 125 Cal.App.4th 470, a city planning commission's rejection of a real estate project was set aside because a commissioner authored an article attacking the project while it was under consideration, thereby establishing "an unacceptable probability of actual bias" of the commissioner that was sufficient to disqualify him.

Disciplinary Guidelines Example

Speech-Language Pathology and Audiology Examining Committee

DISCIPLINARY GUIDELINES

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Section 1399.178 is added to Division 13.4 of Title 16, Article 6 entitled "Disciplinary Guidelines" of the California Code of Regulations to read:

Article 6. Disciplinary Guidelines

1399.178. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the Committee shall consider the disciplinary guidelines entitled "Disciplinary Guidelines Revised September 3, 1997," that are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Committee, in its sole discretion, determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; and evidentiary problems.

Note: Authority cited: Section 2531.95, Business and Professions Code, Section 11425.50(e), Government Code. Reference: Sections 2533 and 2533.1 Business and Professions Code; Section 11425.50(e), Government Code.

DISCIPLINARY GUIDELINES

The Committee recognizes that these penalties and conditions of probation are guidelines, and that each disciplinary case must be assessed individually. If individual circumstances exist that justify omissions or deviations from these guidelines, the Committee asks that these be explained by the Administrative Law Judge hearing the case. This will help the Committee to better evaluate proposed decisions and to make decisions that accurately reflect the facts of each specific disciplinary matter.

STANDARD TERMS AND CONDITIONS OF PROBATION (1-13)

1. OBEY ALL LAWS:

Respondent shall obey all federal, state, and local laws, including all statutes and regulations governing the practice of the licensee.

Further, respondent shall, within five (5) days of any arrest, submit to the Committee in writing a full and detailed account of such arrest.

2. COMPLY WITH PROBATION PROGRAM

Respondent shall fully comply with the probation program established by the Committee and shall cooperate with the representatives of the Committee.

3. CHANGE OF ADDRESS NOTIFICATION

Respondent shall, within five (5) days of a change of residence or mailing address, notify the Committee in writing of the new address.

4. OUT-OF-STATE RESIDENCY

Respondent shall notify the Committee immediately in writing if he or she leaves California to reside or practice in another state.

Respondent shall notify the Committee immediately upon return to California.

The period of probation shall not run during the time respondent is residing or practicing outside California.

5. SUBMIT QUARTERLY WRITTEN DECLARATIONS

Respondent shall submit to the Committee quarterly written declarations and verification of actions signed under penalty of perjury. These declarations shall certify and document compliance with all the conditions of probation.

6. NOTIFY EMPLOYER OF PROBATION TERMS AND RESTRICTIONS

When currently employed or applying for employment as a speech-language pathologist or audiologist, respondent shall notify his or her employer of the probationary status of respondent's license. This notification to the respondent's current health care employer shall occur no later than the effective date of the Decision placing respondent on probation. The respondent shall notify any prospective health care employer of his or her probationary status with the Committee prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Committee's Decision placing respondent on probation.

Respondent shall cause each employer to submit quarterly written declarations to the Committee. These declarations shall include a performance evaluation.

Respondent shall notify the Committee, in writing, of any change in his or her employment status, within ten (10) days of such change.

7. INTERVIEWS WITH COMMITTEE REPRESENTATIVES

Respondent shall appear in person for interviews with the Committee, or its designee, upon request at various intervals and with reasonable notice. An initial probation visit will be required within sixty (60) days of the effective date of the Decision. The purpose of this initial interview is to introduce Respondent to the Committee's representatives and to familiarize Respondent with specific probation conditions and requirements. Additional meetings may be scheduled as needed.

8. EMPLOYMENT LIMITATIONS

While on probation, Respondent may not work as a faculty member in an accredited or approved school of speech-language pathology or school of audiology.

9. EDUCATIONAL COURSE

Respondent shall take and successfully complete course work substantially related to the violation. The Committee shall, within sixty (60) days of the effective date of the Decision, advise the Respondent of the course content and number of contact hours required. Within thirty (30) days thereafter, Respondent shall submit a plan to comply with this requirement. Respondent must obtain approval of such plan by the Committee prior to enrollment in any course of study.

Respondent shall successfully complete the required remedial education no later than the end of the first year of probation. Upon successful completion of the course, Respondent shall cause the instructor to furnish proof to the Committee immediately.

10. FUNCTION IN LICENSED CAPACITY

During probation, Respondent shall work in his or her capacity in the State of California. If respondent is unable to secure employment in his or her capacity, the period of probation shall be tolled during that time.

11. MAINTAIN A VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the Committee, including any period during which suspension or probation is tolled.

Should Respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement, Respondent's license shall be subject to any and all terms of this probation not previously satisfied.

12. VIOLATION OF PROBATION

If Respondent violates probation in any respect, the Committee may seek to revoke probation and carry out the disciplinary order that was stayed. The Respondent shall receive prior notice and the opportunity to be heard. If an Accusation or Petition to Vacate Stay or other formal disciplinary action is filed against Respondent during probation, the Committee shall have continuing jurisdiction and the period of probation shall be extended until the matter is final.

13. COMPLETION OF PROBATION

Respondent's license will be fully restored upon successful completion of probation.

OPTIONAL TERMS AND CONDITIONS OF PROBATION (14-26)

14. SUBMIT TO EXAMINATION BY PHYSICIAN

Within sixty (60) days of the effective date of the Decision, Respondent shall submit to a physical examination by a physician of his or her choice who meets minimum criteria established by the Committee. The physician must be licensed in California and Board certified in Family Practice, Internal Medicine, or a related specialty. The purpose of this examination shall be to determine Respondent's ability to perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician with a copy of the Committee's Decision prior to the examination. Cost of such examination shall be paid by Respondent.

Respondent shall cause the physician to complete a written medical report. This report shall be submitted by the physician to the Committee within ninety (90) days of the effective date of the Decision. If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Committee within three (3) working days. The Committee shall notify the respondent in writing of the examining physician's determination of unfitness to practice and shall order the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Committee is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Committee.

15. PSYCHOLOGICAL EVALUATION

Respondent shall participate in a psychiatric or psychological evaluation. This evaluation shall be for the purpose of determining Respondent's current mental, psychological and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Committee's Decision prior to the evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board certified in

psychiatry or by a clinical psychologist licensed in California approved by the committee.

Within twenty (20) days of the effective date of the Decision, Respondent shall submit to the Committee the name of one or more proposed evaluators for prior approval by the Committee.

Respondent shall cause the evaluator to submit to the Committee a written psychiatric or psychological report evaluating Respondent's status and progress as well as such other information as may be requested by the Committee. This report shall be submitted within ninety (90) days from the effective date of the Decision. Cost of such evaluation shall be paid by the Respondent.

If the evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Committee within three (3) working days. The Committee shall notify the Respondent in writing of the evaluator's determination of unfitness to practice and shall notify the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Committee is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Committee.

If the evaluator finds that psychotherapy is required, Respondent shall participate in a therapeutic program at the Committee's discretion. Cost of such therapy shall be paid for by Respondent.

16. PSYCHOTHERAPY

Respondent shall participate in ongoing psychotherapy with a California licensed psychiatrist, Board certified in Psychiatry, clinical psychologist, marriage, family, and child counselor, or licensed clinical social worker approved by the Committee. Counseling shall be at least once a week unless otherwise determined by the Committee. Respondent shall continue in such therapy at the Committee's discretion. Cost of such therapy shall be paid for by Respondent.

Within twenty (20) days of the effective date of the Decision, Respondent shall submit to the Committee the name of one or more proposed therapists for prior approval. Upon approval by the Committee, Respondent shall commence psychotherapy. Respondent shall provide the therapist with a copy of the Committee's Decision no later than the first counseling session.

If the therapist finds that Respondent is not psychologically fit to practice safely,

or can only practice with restrictions, the therapist shall notify the Committee within three (3) working days. The Committee shall notify the Respondent in writing of the therapist's determination of unfitness to practice and shall notify the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Committee is satisfied of Respondent's fitness to practice safely and has so notified the Respondent.

Respondent shall cause the therapist to submit quarterly written declarations to the Committee concerning Respondent's fitness to practice and progress in treatment.

17. REHABILITATION PROGRAM

Within thirty (30) days of the effective date of the Decision, Respondent shall enter a rehabilitation and monitoring program specified by the Committee. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Committee.

Components of the treatment contract shall be relevant to the violation and to the Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs.

The cost for participation in this program shall be paid for by Respondent.

18. ATTEND CHEMICAL DEPENDENCY SUPPORT AND RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous). Documentation of attendance shall be submitted by the Respondent with each quarterly written report. Respondent shall continue attendance in such a group for the duration of probation.

19. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined in Section 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for

a bonafide illness.

20. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

21. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing paid for by Respondent, at the request of the Committee or its designee. Positive test results will be immediately reported to the Committee.

22. TAKE AND PASS LICENSURE EXAMINATION

Before resuming practice, Respondent shall take and pass the licensure examination currently required of new applicants prior to resuming practice. Respondent shall pay all examination fees.

23. SUPERVISION

The Committee shall be informed and approve of the type of supervision provided while the Respondent is functioning as either a licensed speech-language pathologist or licensed audiologist.

Respondent may not function as a supervisor for any required professional experience (RPE) candidate during the period of probation or until approved by the Committee.

24. RESTRICTIONS ON LICENSED PRACTICE

Respondent shall practice only with a restricted patient population, in a restricted practice setting, or engage in limited practice procedures. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in the manner required by the Committee.

25. RECOVERY OF COSTS

Where an order for recovery of costs is made, the Respondent shall make timely payments as directed in the Decision.

26. ACTUAL SUSPENSION OF LICENSE

As part of probation, respondent is suspended from practice for ____ months beginning the effective date of this decision. Respondent shall be responsible for informing his or her employer of the Committee's decision, the reasons for the length of suspension. Prior to the lifting of the actual suspension of license, the Respondent shall provide documentation of completion of educational courses or treatment rehabilitation if required.

PENALTIES FOR DISCIPLINARY ACTIONS

UNPROFESSIONAL CONDUCT (GENERAL)

Sections 480 & 2533 of the Business and Professions Code
Section 1399.180 of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-13) If warranted: Supervision (23) Psychological Evaluation (15) Restricted Practice (24) Suspension (26)

UNPROFESSIONAL CONDUCT -- CONVICTION OF A CRIME OR ACT INVOLVING DISHONESTY, FRAUD, OR DECEIT

Sections 480(a)(1), 480(a)(2), 490 & 2533(a) of the Business and Professions
Code

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-13) If warranted: Supervision (23) Psychological Evaluation (15) Restricted Practice (24)

Suspension (26)

UNPROFESSIONAL CONDUCT -- SECURING LICENSE UNLAWFULLY

Sections 498 & 2533(b) of the Business and Professions Code

MINIMUM

Revocation or Denial

Note: The severity of this offense warrants revocation or denial in all cases.

**UNPROFESSIONAL CONDUCT -- USE OR ADMINISTERING TO ONESELF
ANY CONTROLLED SUBSTANCE**

Section 2533(c)(1) of the Business and Professions Code

MAXIMUM

Revocation or Denial

MINIMUM

3 Years Probation

Standard Terms of Probation (1-13)

Physician Exam (14)

Support and Recovery Group (18)

Abstain from Drugs and Alcohol (19-20)

Submit Biological Fluids (21)

Supervision (23)

If warranted:

Psychological Evaluation (15)

Psychotherapy (16)

Drug and Alcohol Rehabilitation (17)

Restricted Practice (24)

Suspension (26)

Note: In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are: insufficient evidence of rehabilitation, denial of problem, unstable employment history, significant diversion of patients' medications, prior disciplinary action, multiple violations and patient harm.

**UNPROFESSIONAL CONDUCT -- USE OF ANY DANGEROUS DRUGS
SPECIFIED IN SECTION 4211 OF BUSINESS AND PROFESSION CODE,
OR USE OF ALCOHOLIC BEVERAGES EXTENT IMPAIRS ABILITY
TO PRACTICE SAFELY**

Section 2533(c)(2) of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms of Probation (1-13) Physician Exam (14) Support and Recovery Group (18) Abstain from Drugs and Alcohol (19-20) Submit Biological Fluids (21) Supervision (23) If warranted: Psychological Evaluation (15) Psychotherapy (16) Drug and Alcohol Rehabilitation (17) Restricted Practice (24) Suspension (26)

Note: In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are: insufficient evidence of rehabilitation, denial of problem, unstable employment history, significant diversion of patients' medications, prior disciplinary action, multiple violations and patient harm.

**UNPROFESSIONAL CONDUCT -- MORE THAN ONE MISDEMEANOR
OR ANY FELONY INVOLVING USE, CONSUMPTION, OR SELF-
ADMINISTRATION OF ANY CONTROLLED SUBSTANCES, ALCOHOL,
OR DANGEROUS DRUG**

Section 2533(c)(3) of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-13) Support and Recovery Group (18)

Abstain from Drugs and Alcohol (19-20)

Submit Biological Fluids (21)

If warranted:

Physical Examination (14)

Psychological Evaluation (15)

Drug and Alcohol Rehabilitation (17)

Supervision (23)

Restricted Practice (24)

Suspension (26)

Note: In some instances public safety can only be assured by removing the licensee from practice. Factors to consider are: conviction of possession of drugs for sale, contribution to delinquency of minors, and other similar offenses.

UNPROFESSIONAL CONDUCT -- FALSE OR MISLEADING ADVERTISING

Section 2533(d) of the Business and Professions Code

Section 1399.185 of the California Code of Regulations, Title 16

MAXIMUM

Revocation or Denial

MINIMUM

18 Months Probation

Standard Terms (1-13)

If warranted:

Supervision (23)

UNPROFESSIONAL CONDUCT -- COMMITTING A DISHONEST OR FRAUDULENT ACT SUBSTANTIALLY RELATED TO QUALIFICATIONS, FUNCTIONS, OR DUTIES OF LICENSEES (Non-Drug Related)

Section 2533(e) of the Business and Professions Code

MAXIMUM

Revocation or Denial

MINIMUM

18 Months Probation

Standard Terms of Probation (1-13)

Supervision (23)

If warranted:

Physician Examination (14)

Psychological Evaluation (15)

Restricted Practice (24)

Suspension (26)

UNPROFESSIONAL CONDUCT BY SPEECH-LANGUAGE PATHOLOGY CORPORATION OR AUDIOLOGY CORPORATION

Section 2537.2 of the Business and Professions Code

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation
Standard Terms of Probation (1-13)

DISCIPLINARY ACT BY FOREIGN JURISDICTION

Section 141 of the Business and Professions Code

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation
Standard Terms of Probation (1-13)
If warranted:
 Support and Recovery Group (18)
 Abstain from Drugs and Alcohol (19-20)
 Submit Biological Fluids (21)
 Physical Examination (14)
 Psychological Evaluation (15)
 Drug and Alcohol Rehabilitation (17)
 Supervision (23)
 Restricted Practice (24)
 Suspension (26)

SEXUAL MISCONDUCT

Section 726 of the Business and Professions Code

MAXIMUM Revocation or Denial

MINIMUM 3 Years Probation
Standard Terms of Probation (1-13)
Supervision (23)
If warranted:
 Psychological Evaluation (15)
 Psychotherapy (16)
 Restricted Practice (24)
 Suspension (26)

**VIOLATION OF REQUIRED PROFESSIONAL EXPERIENCE
(RPE) REGULATIONS**

Sections 1399.162, 1399.163, 1399.164, 1399.166, & 1399.169
of the California Code of Regulations, Title 16

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation
Standard Terms of Probation (1-13)

**VIOLATION OF LAWS AND REGULATIONS RELATING
TO SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AIDES**

Section 2530.6 of the Business and Professions Code
Sections 1399.171-1399.175 of the California Code of Regulations, Title 16

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation
Standard Terms of Probation (1-13)

**UNPROFESSIONAL CONDUCT-AIDING AND ABETTING IN
THE COMMISSION OF A VIOLATION OF
AN ACT OR REGULATION**

Section 1399.180(a) of the California Code of Regulations, Title 16

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation
Standard Terms of Probation (1-13)

**UNPROFESSIONAL CONDUCT-CORRUPT OR ABUSIVE
ACT AGAINST A PATIENT**

Section 1399.180(b) of the California Code of Regulations, Title 16

MAXIMUM Revocation or Denial

MINIMUM 3 Years Probation
Standard Terms of Probation (1-13)
Supervision (23)
If warranted:
 Psychological Evaluation (15)
 Psychotherapy (16)
 Restricted Practice (24)
 Suspension (26)

Note: In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are: insufficient evidence of

rehabilitation, denial of problem, prior disciplinary action, multiple violations and patient harm.

UNPROFESSIONAL CONDUCT- INCOMPETENCE OR NEGLIGENCE

Section 1399.180 of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms of Probation (1-13) Supervision (23) If warranted: Psychological Evaluation (15) Psychotherapy (16) Restricted Practice (24) Suspension (26)

Note: In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are: insufficient evidence of rehabilitation, denial of problem, prior disciplinary action, multiple violations and patient harm.

RECOMMENDED LANGUAGE FOR ISSUANCE AND PLACEMENT OF A LICENSE ON PROBATION FOR INITIAL LICENSURE AND REINSTATEMENT OF LICENSE

In order to provide clarity and consistency in its decisions, the Speech-Language Pathology and Audiology Examining Committee recommends the following language in proposed decisions or stipulated agreements for applicants who hold a license in another state and for petitioners for reinstatement who are issued a license that is placed on probation.

Suggested language for applicants who are placed on probation:

"The application of respondent _____ for licensure is hereby granted. Upon successful completion of all licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following terms and conditions:"

Suggested language for applicants who are licensed in another state and are placed on probation:

"The application of respondent for licensure is hereby granted and a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of ____ years on the following terms and conditions:"

Suggested language for reinstatement of licensure with conditions of probation:

"The application of respondent _____ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of ____ years on the following terms and conditions:"